



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2004

Ms. Bertha A. Ontiveros  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2004-10513

Dear Ms. Ontiveros:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214789.

The El Paso County Sheriff's Department (the "department") received a request for booking records pertaining to the incarceration of a named individual in the El Paso County Detention Facility between May 10 and May 13, 1994. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you contend that the named individual's social security number is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. We note that a social security number contained in records held by the sheriff is not confidential *per se*. A social security number may be excepted in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, you have not identified any provision of

law enacted on or after October 1, 1990 pursuant to which the sheriff obtained or maintains the social security number at issue. We therefore have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

Next, you contend that the named individual's Texas driver's license number is excepted from disclosure under section 552.130 of the Government Code, which provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We agree that the sheriff must withhold the Texas driver's license number in the submitted documents pursuant to section 552.130 of the Government Code.

In summary, if the sheriff obtained or maintains the social security number at issue pursuant to a provision of law enacted on or after October 1, 1990, the sheriff must withhold the social security number pursuant to section 552.101 of the Government Code in conjunction with federal law. Otherwise, the social security number is not excepted from required public disclosure and must be released to the requestor. The sheriff must withhold the Texas driver's license number at issue pursuant to section 552.130 of the Government Code. The remainder of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

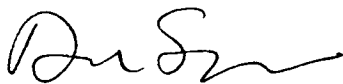
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 214789

Enc: Submitted documents

c: Ms. Edith Roman  
220 Vista Bonita  
El Paso, Texas 79912  
(w/o enclosures)